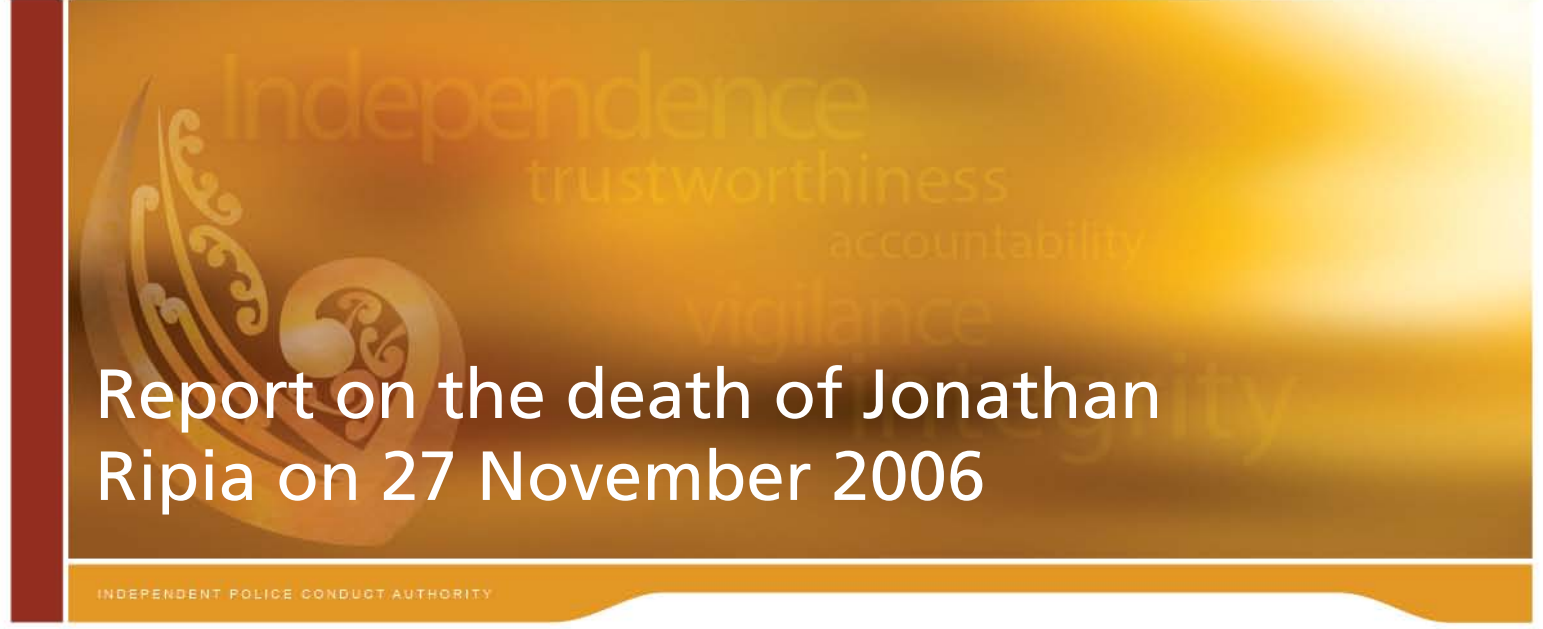




Report on the death of Jonathan Ripia on 27 November 2006

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. Shortly before 9.56am on 27 November 2006 Jonathan Ripia, aged 47, assaulted a Police officer at the Hamilton District Court. During attempts by Police and others to restrain him, he struggled violently and lost consciousness. He was resuscitated but later died in hospital. The cause of his death was positional asphyxia, which occurred during the attempts to restrain him.
2. As required under section 13 of the Independent Police Conduct Authority Act 1988, the Police notified the Authority of the death, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. Mr Ripia had a long history of paranoid schizophrenia and was prescribed anti-psychotic medication to manage this condition. He was also known to drink alcohol heavily and smoke cannabis.
4. On 22 November 2006 he was arrested and charged with unlawful interference of a motor vehicle and resisting Police. While he was detained at the Police Station, Mr Ripia's sister expressed concern to Police that her brother's mental health appeared to be deteriorating. As a result of these concerns, the Crisis Assessment and Treatment Team (CATT)¹ conducted a mental health

¹ CATT teams are local mental health teams that provide a 24-hour crisis response, which includes assessment of persons in Police custody.

assessment of Mr Ripia. Following this assessment he was released from custody on Police bail to appear at the Hamilton District Court on 27 November 2006 to answer the charges. A CATT member called Mr Ripia's sister later on 22 November and advised her that Mr Ripia did not require hospitalisation for his mental health condition.

5. After his release from custody Mr Ripia's family and friends continued to have concerns about his mental health and described his behaviour as out of character.
6. On the morning of 27 November 2006 Mr Ripia attended the Hamilton District Court. Witnesses in the foyer of the building described him as being in an agitated state. He was verbally and physically aggressive and approaching members of the public in a threatening manner.
7. At approximately 9.55am a Police officer entered the foyer to deliver a file to the Crown Prosecutor in Courtroom 1. The officer had no previous dealings with Mr Ripia, nor was he aware of his criminal history or mental illness.
8. As the officer walked towards Courtroom 1 through the foyer, Mr Ripia approached him and was verbally abusive. The officer chose to ignore Mr Ripia and entered Courtroom 1.
9. When the officer left the Courtroom, at approximately 9.56am, Mr Ripia was again verbally abusive to him. The officer approached Mr Ripia to warn him about his language. Mr Ripia adopted a fighting stance and then, quite unprovoked, punched the officer in the face. This assault and Mr Ripia's prior behaviour were captured on the District Court's CCTV system.
10. A struggle ensued between the officer and Mr Ripia. Mr Ripia fell to the ground and the officer was assisted in restraining him by Court security officers and members of the public. Mr Ripia continued to struggle and attempts were made to apply handcuffs to restrain him. In order to complete the handcuffing, the officer sprayed a small amount of oleoresin capsicum (OC) spray onto his hand and then rubbed his hand over Mr Ripia's eyes. The officer chose this method of application as he did not want others nearby to be affected by the spray.
11. After the application of the OC spray Mr Ripia was rolled over onto his front (in the prone position) and handcuffs were applied. Because he was continuing to kick violently, his feet were restrained with ankle restraints.
12. At approximately 9.59am Mr Ripia was rolled onto his side and it was observed that he had stopped breathing. The handcuffs were removed and CPR was

commenced by Police and Court staff. The plastic ties around his feet were then removed.

13. Mr Ripia was resuscitated and placed in the recovery position. Ambulance officers arrived at approximately 10.05am and provided medical assistance to him. He stopped breathing on a number of occasions both at the Court and on the way to Waikato Hospital, requiring CPR to be administered.
14. Mr Ripia was admitted to the intensive care unit but died on 28 November 2006.

Post mortem and toxicology

15. A post mortem was conducted and a report was released on 4 April 2007. The post mortem conclusion was that Mr Ripia died as a result of the effects of positional asphyxia.
16. Toxicology results showed no evidence of alcohol in Mr Ripia's blood but evidence of tetrahydrocannabinol (the active chemical in cannabis) and Zuclopenthixol (an anti-psychotic drug).

Coroner's report

17. An inquest was held in Hamilton on 7 May 2008 and the Coroner's report is yet to be released.

POSITIONAL ASPHYXIA

18. Positional asphyxia resulting in death arises from circumstances which induce an increased need for oxygen and an inability of the body to meet that increased need.
19. The condition is related to the following risk factors in individuals (not all of which need to be present):
 - high level of stress;
 - wild, threatening or bizarre behaviour with possible mania or psychosis;
 - violent behaviour and/or resistance;
 - restraint (especially in a prone, face-down position);
 - restraint (especially in a prone position) with cuffed hands or feet;

- drug and alcohol abuse;
- male gender; and
- obesity.

20. Police recruits receive training on positional asphyxia. Subsequent training is provided annually as part of the Staff Safety Tactical Training (SSTT) programme. The New Zealand Police *Manual of Best Practice* and General Instruction A267 – Positional Asphyxiation provide guidance and direction for officers in recognising the risks of positional asphyxia and the management of those risks. Both were in force at the time of this incident.

USE OF FORCE BY POLICE DURING ARREST

21. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrest and enforcement of warrants. Specifically, it provides that officers may use "*such force as may be necessary*" to overcome any force used in resisting the law enforcement process unless the process *can* be carried out "*by reasonable means in a less violent manner*".
22. Section 48 of the Crimes Act states: "*Every one is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use*".
23. Section 62 of the Crimes Act makes officers criminally responsible for any excess use of force.
24. The New Zealand Police *Manual of Best Practice* also provides officers with guidance on use of force matters. Officers using force on any person are required to submit a tactical options report (at the time of this incident, a use of force report) to their supervisors at the first opportunity.

TACTICAL OPTIONS

25. The Police have a range of tactical options available to help restrain a person or effect an arrest. These include handcuffs, ankle restraints and OC spray.
26. Police recruits receive training on the use of handcuffs and ankle restraints. Subsequent training is provided annually as part of the SSTT programme. The New Zealand Police *Manual of Best Practice* and General Instruction A265 -

Handcuffs provide guidance and direction on 'Means of Restraint' which includes the use of handcuffs. They were in force at the time of this incident.

27. OC Spray is used by Police to subdue people who are actively resisting and is categorised as a restricted weapon.² General Instruction A269(3) was in force at the time and stated that the use of OC spray by an officer is a use of force and must be reasonable in the circumstances.
28. Police recruits receive training on the use of OC spray. Follow-up training is provided annually as part of the SSTT programme. General Instruction A270 – Use of OC Spray provided guidance and direction on the use of OC spray at the time of this incident.

THE AUTHORITY'S FINDINGS

Arrest

29. Given Mr Ripia's behaviour, the officer had a lawful duty to arrest him.

FINDING

The arrest of Mr Ripia was lawful and justified.

Use of force during arrest

30. There is clear evidence from the CCTV footage and witnesses about Mr Ripia's unpredictable behaviour and confirming that the assault on the officer was unprovoked. The force used during Mr Ripia's arrest was necessary and proportionate, and there is no evidence of criminal conduct on the part of the officer or anyone else involved in this incident.

FINDING

The force used by Police was reasonable in the circumstances and therefore justified under sections 39 and 48 of the Crimes Act.

² Clause 2 and paragraph 8 of the Schedule to the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984.

Compliance with policy, practices and procedures around restraint

31. The officer acted in accordance with General Instructions and policy in force at the time of this incident and his certification in relation to all related competencies was current.

FINDING

There was no breach of General Instructions, District Orders or directives by any officer in connection with this incident.

Medical assistance

32. Immediately after it was noticed that Mr Ripia had lost consciousness, the handcuffs and feet ties were removed and the officer and others commenced CPR until ambulance officers arrived. The officer's first aid certification was current.

FINDING

The medical assistance provided by the officer and others was immediate and appropriate.

CONCLUSION

33. The Authority finds that the actions of the Police involved in this incident were legal and within policy, and there was no misconduct or neglect of duty on the part of any officer.



Hon Justice L P Goddard

Chair

Independent Police Conduct Authority

March 2009

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is chaired by a High Court Judge and has two other members.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority has two investigating teams, made up of highly experienced investigators who have worked in a range of law enforcement roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- Receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority can make findings and recommendations about Police conduct.



IPCA

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